(2)

Supreme Court, U.S.
FILED
MAY 8 1997
CLERK

No. 96-1596

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

STATE OF CALIFORNIA, et al.,

Petitioners,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

AMICUS CURIAE BRIEF OF THE STATE OF FLORIDA IN SUPPORT OF PETITIONERS

ROBERT A. BUTTERWORTH
Attorney General of Florida

LOUIS F. HUBENER
Assistant Attorney General
(Counsel of Record)

OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, FL 32399-1050
(904) 488-9935

COUNSEL FOR AMICUS CURIAE
STATE OF FLORIDA

20 pp

TABLE OF CONTENTS

Page(s)

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 4

ARGUMENT 6

I. CLAIMS BASED ON THE INVASION CLAUSE MUST BE CONSIDERED JUSTICIABLE WHEN ONLY JUDICIAL ACTION CAN PRESERVE THE ESSENTIAL BALANCE OF OUR CONSTITUTIONAL STRUCTURE 6

II. REQUIRING CALIFORNIA TO SPEND STATE TAX DOLLARS TO PROVIDE EMERGENCY HEALTH CARE TO ILLEGAL IMMIGRANTS VIOLATES THE SPENDING CLAUSE AND THE TENTH AMENDMENT . . . 12

CONCLUSION 15

TABLE OF AUTHORITIES

Cases	*Page(s)*
Baker v. Carr, 369 U.S. 186, (1962)	passim
Chiles v. United States, 69 F.3d 1094 (11th Cir. 1995), *cert denied*, 116 S.Ct. 1674 (1996)	2
Fiallo v. Bell, 430 U.S. 787 (1977)	7, 10
Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985)	9
Goldwater v. Carter, 444 U.S. 996, 1004 (1979)	8
Japan Whaling Ass'n v. American Cetacean Society, 478 U.S. 221 (1986)	8, 9
Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)	9
Nevada v. Skinner, 884 F.2d 445 (9th Cir. 1989)	4
New York v. United States, 505 U.S. 144 (1992)	13, 14
Nixon v. United States, 506 U.S.224,113 S.Ct. 732 (1993)	9
Padavan v. United States, 82 F.3d 23 (2nd Cir. 1996)	2
Plyler v. Doe, 457 U.S. 202 (1982)	13
South Dakota v. Dole, 483 U.S. 203 (1987)	13
State of Arizona v. United States, 104 F.3d 1095 (9th Cir. 1997)	2
State of New Jersey v. United States, 91 F.3d 463 (3rd Cir. 1996)	2
State of Texas v. United States, 106 F.3d 661 (5th Cir. 1997)	2
The Chinese Exclusion Case, 130 U.S. 581 (1889)	11, 12
United States v. Lopez, 514 U.S. 549, 115 S.Ct. 1624 (1995)	7
Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)	8

Cases *Page(s)*

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article IV, §4, United States Constitution 4, 6

Tenth Amendment . . . . . passim

Title XVI, Social Security Act 2

OTHER AUTHORITIES

Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class,* 42 UCLA L.Rev. 1509 (1995) 6

Fix & Passel, *Immigration and Immigrants: Setting the Record Straight* 6 (1994) 6

Legomsky, *Immigration, Federalism and the Welfare State,* 42 UCLA L. Rev. 1453 (1995) 6

Urban Institute Report I, chs. 3–5 6

The Federalist No. 43 (Cooke ed. 1961) 10

No. 96-1596

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

STATE OF CALIFORNIA, et al.,

Petitioners,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF THE STATE OF FLORIDA IN SUPPORT OF PETITIONERS

INTEREST OF *AMICUS CURIAE*

Like California, Florida and a small number of other states are the collective hosts of millions of undocumented aliens. Although in theory only limited numbers of aliens may lawfully be admitted into the United States, because of the way in which the immigration laws are enforced—or not enforced—millions enter and remain here in violation of those laws. Most of these undocumented aliens have taken up residence in one of seven states.[1]

1 Those states, in addition to California, are Florida, Texas, Arizona, New York, New Jersey and Illinois.

As California has pointed out, all of these states except Illinois initiated legal actions in which they sought to compel the federal government to assume some responsibility for the severe economic burdens they were forced to bear as a result of federal immigration policy. None was successful.[2] California's petition for certiorari may present the last opportunity for this Court to consider and rule upon whether states have enforceable rights under the Invasion Clause and the Tenth Amendment.

What lends particular urgency to the need for review is that the federal government, having successfully—at least to now—obligated a small minority of states to absorb the costs of millions of *illegal* immigrants, has now enacted legislation and policies that will make the states—for the most part the same seven—financially responsible for the welfare costs of *legal* immigrants. Perhaps emboldened by the seeming defeat of the states in their federal court actions, Congress enacted the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," P.L. 104–193, Title IV (110 Stat. 2105), legislation which it has trumpeted as calculated to make immigrants "self-sufficient." In fact, this legislation deprives many *legal* immigrants who have been residents of the United States for years of eligibility for food stamps and for supplemental security income ("SSI") under Title XVI of the Social Security Act.[3]

Thus, in addition to the burdens imposed by several hundred thousand illegal immigrants, Florida now estimates that over 38,000 legal immigrants resident in the state will

---

2 *See Chiles v. United States*, 69 F.3d 1094 (11th Cir. 1995), *cert. denied*, 116 S.Ct. 1674 (1996); *State of Arizona v. United States*, 104 F.3d 1095 (9th Cir. 1997); *Padavan v. United States*, 82 F.3d 23 (2nd Cir. 1996); *State of New Jersey v. United States*, 91 F.3d 463 (3rd Cir. 1996); *State of Texas v. United States*, 106 F.3d 661 (5th Cir. 1997).

3 Supplemental security income is a program authorized by Title XVI of the Social Security Act, 42 U.S.C. §1381(a)–1383(d), that provides subsistence benefits to the blind, the elderly and the disabled.

be ineligible for food stamps and that approximately 54,000 blind, elderly or disabled legal immigrants will be ineligible for SSI as a result of the 1996 legislation. Florida will have no choice but to assist the destitute and disabled with state funds. Other states similarly situated will undoubtedly confront comparable burdens.

Although the 1996 legislation presents somewhat different legal and constitutional considerations, it is apparent that the federal government's operative immigration policies now seriously threaten the federal-state balance and the financial integrity of many states. Contrary to many of this Court's recent pronouncements, the states—or at least a few disfavored ones—have been made the financial agents of the federal government and they have no choice but to bear the costly burdens of both legal and illegal immigration. Were more than a handful so threatened, a national crisis would clearly be at hand. But a crisis is at hand, nevertheless, for the small minority of states that have become the federal government's fiscal agents.

This Court should begin to set the balance right by addressing California's claims based on the Invasion Clause and the Tenth Amendment.

STATEMENT OF THE CASE

California's amended complaint seeks relief against the federal government from the enormous costs the state has been forced to absorb as a result of the continuing presence of massive numbers of undocumented aliens. California alleges that there are some 1.7 million illegal immigrants in the state and that an estimated 125,000 additional illegal immigrants enter the state every year. Expenditures for emergency medical services, incarceration and parole services for this segment of the population have run into the billions of dollars.

California's constitutional claims are based on the Invasion Clause of Article IV, §4, United States Constitution, and on the Tenth Amendment. It asserts that the United States has failed under the Invasion Clause to protect it from an overwhelming deluge of illegal immigrants and that the United States has also failed utterly in its statutory responsibilities to deport those illegal immigrants it might readily deport (*e.g.*, those convicted of certain felonies), and prosecute those who unlawfully reenter after deportation. California further contends that compelling it to provide emergency medical services to illegal immigrants as part of the state's Medicaid responsibilities violates the Tenth Amendment.

The amended complaint sought a declaration that the respondents are not performing their constitutional and statutory duties; an order requiring respondents to prepare and implement a plan for fulfilling their duties; and reimbursement of the state's costs for providing emergency health care to illegal immigrants.

The Court of Appeals, affirming the dismissal of the amended complaint, tersely ruled that the Invasion Clause claim presented a nonjusticiable political question, relying on *Baker v. Carr*, 369 U.S. 186, 217 (1962). And, analogizing to an earlier decision involving federal *highway* funds, *Nevada v. Skinner*, 884 F.2d 445 (9th Cir. 1989), it refused to consider that California was subject to any unconstitutionally coercive pressures respecting Medicaid as long as the state was free to increase state tax revenues to make up for any lost federal funds. Accordingly, the Court of Appeals ruled that California failed to state a claim for relief under the Tenth Amendment.

SUMMARY OF ARGUMENT

I.

It is clear that neither Congress nor the Executive Branch intends to vigorously deter illegal immigration or to alleviate the financial burdens that the seven most affected states have borne—and will continue to bear—as a direct conse-

quence of their immigration policies. Thus, while the narrower issue posed by this case is whether the Invasion Clause is a source of enforceable rights for the states, this case also presents a larger issue of constitutional federalism the significance of which can scarcely be overstated.

When for obvious structural reasons neither of the political branches has any incentive to protect and assist a small minority of states, those states may not be denied the clear promise of protection embodied in the Invasion Clause because of a misplaced, if not contrived, concern for "foreign policy." The question presented by California's Invasion Clause claim is whether the states have a right to protection from invasion or to financial restitution when that protection is not forthcoming. That is an issue of domestic significance only, not of foreign policy. Hence, it is not a nonjusticiable political question.

II.

California plainly has no alternative to spending hundreds of millions of state tax dollars to provide emergency medical care for illegal immigrants in order to remain eligible for federal Medicaid assistance. California's choice to remain in the Medicaid program is not the result of pressure, but rather of the most patent coercion. Moreover, California has far more illegal immigrants than any other state, the vast majority of which have few or none. If illegal immigrants are entitled to emergency medical care, that care should be paid for entirely with federal tax dollars. For the national government to compel only a few states to bear this cost violates the Tenth Amendment by conscripting the resources of those few states to pay for a national problem and by making it appear that those states are willingly pursuing their own legislative agendas rather than the agenda of the national government.

ARGUMENT

I. CLAIMS BASED ON THE INVASION CLAUSE MUST BE CONSIDERED JUSTICIABLE WHEN ONLY JUDICIAL ACTION CAN PRESERVE THE ESSENTIAL BALANCE OF OUR CONSTITUTIONAL STRUCTURE.

The importance of the issues presented in this case is self-evident. By its own admission, the national government has lost control of the nation's borders. The resultant tide of illegal immigration has imposed enormous costs on only a handful of states—seven to be exact—and the remaining 43 are virtually unaffected by it. In the starkest practical terms, this case presents the question whether officials of the national government can, essentially by defaulting on their constitutional and statutory duties, impress a few states to bear huge, disproportionate and wholly inequitable financial costs. The legal question presented by this case is of the utmost importance for constitutional federalism: whether a constitutional provision securing the states against "invasion" means what it says, and, if so, whether it is judicially enforceable.[4]

The predicament in which the seven states now find themselves did not just happen. These states are caught between the federal executive branch, which at best is indifferent to their plight and at worst profits from it,[5] and the Congres-

---

4 Article IV,§4, United States Constitution, provides in pertinent part that: "The United States shall guarantee to every State in this Union a Republican Form of Government, *and shall protect each of them against invasion;....*"

5 That illegal immigrants produce a net financial gain for the national government and that the costs attributable to them for education, medical services, and incarceration far exceed state and local revenues generated from them in the seven most affected states does not seem open to serious question. *See, e.g.*, Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class,* 42 UCLA L. Rev. 1509, 1539 & n. 126 (1995) (citing Fix & Passel, *Immigration and Immigrants: Setting the Record Straight 6* (1994)); Legomsky, *Immigration, Federalism and the Welfare State,* 42 UCLA L. Rev. 1453, 1470 (1995) (citing *Urban Institute Report I,* chs. 3–5).

sional representatives of the other forty-three states who have every incentive to let the minority of states absorb the costs of a national policy of accommodating illegal immigration. The practical and constitutional importance of the justiciability of the Invasion Clause is therefore underscored and heightened by the absence of any political mechanisms or incentives by which the underlying constitutional strains might be eased.

The situation thus speaks for itself: this Court is the only remaining forum in which the vital questions of constitutional structure presented by this case can be addressed. "[T]he federal balance is too essential a part of our constitutional structure and plays too vital a role in securing freedom for [this Court] to admit inability to intervene when one or the other level of Government has tipped the scales too far." *United States v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 1639 (1995) (Kennedy, J., joined by O'Connor, J., concurring).

A. California's Claim Does Not Present A Nonjusticiable Political Question.

The Court of Appeals brushed off the Invasion Clause claim with the facile assertion that "the issue of protection of the states from invasions implicates foreign policy concerns which have been constitutionally committed to the political branches," and also cited *Fiallo v. Bell*, 430 U.S. 787, 792 (1977), for the proposition that "the political branches have plenary powers over immigration." (Pet. App. 12)

The issue here has little if anything to do with either foreign policy or the federal government's plenary authority over immigration. A federal policy to essentially ignore the influx of massive numbers of illegal immigrants cannot, absent an Orwellian twist of words' common meanings, be considered "foreign policy." Indeed, respondents cannot point to the statement of even one federal executive official who has ever said that the United States is compelled to accommodate illegal immigration because of overriding foreign policy concerns. Even less has Congress come to that conclu-

sion as a result of considered debate. Hence, the federal government's effective seizure of state resources—even if only through its silence and inaction—to provide for the needs of illegal immigrants no more presents a problem of foreign relations than did the attempt of President Truman to seize the steel mills at the height of the Korean War. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). This Court did not shrink from addressing the legality of that seizure on the grounds that the case presented a nonjusticiable political question involving the separation of executive and legislative powers or inconvenient political questions. *See, e.g., Baker v. Carr*, 369 U.S. 186, 211 (1962) ("The nonjusticiability of a political question is primarily a function of the separation of powers"). Nor should it do so now. Here, as in *Youngstown,* the impact of federal action is suffered by discrete, identifiable entities—in this case a few disfavored states. No foreign power can have or should have a stake in this issue.[6]

Even if it could be said that enforcing the Invasion Clause and the immigration laws might cause some concern to some unidentified foreign nations, the courts, for that reason alone, are hardly justified in invoking the political question doctrine. This Court rejected precisely such an argument in *Japan Whaling Ass'n v. American Cetacean Society*, 478 U.S. 221 (1986). That decision construed a statute to determine whether it imposed a mandatory duty on the Secretary of Commerce to certify Japan's refusal to abide by international whaling quotes. If this Court had decided that a certification should have been issued, then the Secretary of Commerce would have been required to impose economic sanctions against a foreign country—Japan. Nonetheless, this Court peremptorily dismissed the suggestion that a political ques-

---

6 *See also Goldwater v. Carter*, 444 U.S. 996, 1004 (1979) (Rehnquist, C. J. concurring in the judgment). Justice Rehnquist recognized that President Truman's action was one "of profound and demonstrable domestic impact."

tion was involved, saying "not every matter touching on politics is a political question,...and...it is 'error to suppose that every case or controversy which touches on foreign relations lies beyond judicial cognizance.'" Id. at 229–230 (quoting *Baker v. Carr*, 369 U.S. 186, 209 (1962)) "[U]nder the Constitution, one of the Judiciary's characteristic roles is to interpret statutes, and we cannot shirk this responsibility merely because our decision may have significant political overtones." 478 U.S. 230.

This being so, this Court is not precluded from construing the Invasion Clause for the reason that the issue presented may have political overtones or touch on foreign relations. Since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), this Court has recognized that the constitutional ideal of the rule of law requires legal remedies adequate to keep the government within the bounds of law. And "whether the action of [either the Legislative or Executive Branch] exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution." *Nixon v. United States*, 506 U.S. 224, 113 S.Ct. 732, 740 (1993) (quoting *Baker v. Carr, supra*, 369 U.S., at 211).

Moreover, as in *Baker v. Carr*, this case involves the clear failure of the political process, in this case a failure to seriously address the needs of seven states who bear the burdens of illegal immigration and who are unable to protect themselves in the national political process. In *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), this Court expressly anticipated that judicial enforcement of the values of federalism might sometimes be necessary under principles "tailored to compensate for possible failings in the national political process rather than to dictate 'a sacred province of state autonomy.'" *Id.* at 554.

If *Baker v. Carr, Marbury v. Madison,* and *Japan Whaling Ass'n*, mean anything, it simply will not do to cavalierly dismiss California's Invasion Clause claim on the ground

that it presents a question textually committed to the political branches. The political process has plainly failed the seven states. No amount of political bargaining is going to alleviate the plight of the seven states when the benefited majority have no incentive to share their burdens. This Court should therefore grant the writ of certiorari in this case to vindicate and clarify the principles reflected in *Garcia:* basic principles of constitutional federalism require judicial protection of the integrity of the states and their political processes in cases involving plain and predictable "failings in the national political process" that, for structural reasons, are unlikely to be self-correcting over time.

B. The Duty Imposed By The Invasion Clause Is Not Limited To Instances Of "Foreign Hostility" Or "Ambitious Or Vindictive Enterprises" Of Other States.

The Court of Appeals improperly sought to limit the reach of the protection afforded the states by the Invasion Clause by saying that it applied only to hostile invasions or "ambitious or vindictive enterprises" on the part of other states or foreign nations, relying on *The Federalist* No. 43 (Cooke ed. 1961). (Pet. App. 13)

That the states, in joining the Union, would surrender their right and power as sovereigns to protect themselves from *any form* of invasion in exchange for an unenforceable promise of protection only from essentially hostile invasions or enterprises is almost unthinkable, and certainly the notion demands more support than the statement of a single Founding Father. Does the Court of Appeals actually mean that the United States as a nation can act only to repel armed, or at least organized, invasions but not those resulting from the decisions of literally millions to ignore the immigration laws? Such an interpretation cannot be squared with even the case law the Court of Appeals cited. *See Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (noting that the power to expel or exclude aliens is a "fundamental sovereign attribute").

The Invasion Clause has not in the past proved so troublesome or devoid of pith, nor have the courts, at least until these cases came along (see cases cited in note 2, supra), seemed so ready to constrain, if not abandon, a core power of a sovereign nation. Their interpretations of the Invasion Clause constitute an astounding narrowing of sovereign power. Moreover, the idea that the Invasion Clause applies *only* to armed or otherwise hostile foreign invasions is directly contrary to this Court's pronouncement in *The Chinese Exclusion Case*, 130 U.S. 581 (1889). In that decision, immediately after referring to the Invasion Clause, this Court plainly stated that the clause was not limited to hostile, military invasions:

> The United States is not only a Government, but it is a national government....*[T]he Government is clothed with power to guarantee to every State a republican form of government, and to protect each of them against invasion* and domestic violence....To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. *It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us.*

Id. at 605–606 (emphasis added).

The states cannot control the nation's borders. They have no power to protect themselves against invasions of undocumented aliens or to deport them. Having foreclosed the states' ability to protect themselves from intruding hordes, the national government assumes an obligation—made explicit in Article IV, section 4—to provide minimally adequate protection to the states.

It is not beyond the capacity of a federal court to determine, based on the overwhelming facts that California has adduced, that the United States has simply failed in its constitutional duty to protect that state from invasion by vast numbers of illegal immigrants. As this Court pointedly stated in *The Chinese Exclusion Case*, it matters not in what "form" that encroachment may come. The Court of Appeal's strained and dubious reading of the Invasion Clause plainly warrants further review.

II. REQUIRING CALIFORNIA TO SPEND STATE TAX DOLLARS TO PROVIDE EMERGENCY HEALTH CARE TO ILLEGAL IMMIGRANTS VIOLATES THE SPENDING CLAUSE AND THE TENTH AMENDMENT.

It is one thing for a state to make a considered decision on behalf of its citizens to join a cooperative federal-state program like Medicaid when it has had the opportunity to thoroughly analyze and debate the pros and cons of that decision. It is quite another for a state to be told two decades later, after structuring a substantial part of its state health care system around this program, that, as a condition of remaining eligible for Medicaid money, the state must expend hundreds of millions of its own tax dollars to provide emergency medical care to persons who had no legal right to enter the United States and who remain only because of the inaction of the national government. This is a classic Hobson's Choice—that is, no choice. It is also coercive and in violation of the Tenth Amendment.

In this instance California is not only pressured, it is compelled to accept the good with the bad. Although a few other states that have substantial illegal immigrant populations face the same dilemma, not one of them even comes close to California's population of 1.7 million illegal immigrants. To a far greater extent than any other state, California must subsidize a class of persons who should be entirely

the responsibility of the federal government and whose medical care should be paid for entirely with federal tax dollars. *See Plyler v. Doe*, 457 U.S. 202, 241 n.1 (1982) (Burger, C. J., dissenting). For Congress to decree that California has the option of foregoing all Medicaid money is the rankest form of compulsion imaginable and it clearly falls within the scope of this Court's words of warning in *South Dakota v. Dole*, 483 U.S. 203, 211 (1987)—that a financial inducement cannot be so coercive "as to pass the point at which pressure turns into compulsion."[7]

Contrary to this Court's repeated pronouncements in *New York v. United States*, 505 U.S. 144 (1992), Congress has thus devised a scheme whereby California is compelled to use California tax dollars to support a federal policy of accommodating—and in certain critical ways encouraging—illegal immigration. In *New York v. United States*, this Court held that a federal statute requiring states either to provide for disposal of nuclear waste or to take title to it offended the Tenth Amendment for a very similar reason. The challenged statute "'commandeer[ed] the legislative processes of the States by directly compelling them to enact and enforce'" a national program. 112 S.Ct. at 2420. Such commandeering, this Court reasoned, deprived the states of their constitutional role as distinct and independent sovereigns. The national government, the Court held, "may not conscript state governments as its agents." *Id.* at 2429.

Here it is obvious that California has been conscripted as the federal government's agent to pay half the costs of providing emergency medical care for a class whose very presence is unlawful, but which, for all practical purposes,

---

7 It is worthy of note that this Court pointed out in *South Dakota v. Dole* that were South Dakota to reject the higher legal drinking age Congress was encouraging states to adopt, it stood to lose only 5% of the funds otherwise obtainable by the state under federal highway programs. 483 U.S. at 211. The consequences for California should it not submit to Congress's coercion are far more dire.

the government has decided to ignore. Illegal immigration is a national problem whose costs should be absorbed by a national program. The national government should not be permitted under the guise of revenue sharing to foist half the total costs of emergency medical care on a few disfavored states.

A second basis for the decision in *New York* also applies to this case. *New York* reasoned that to allow the national government to impose *de facto* obligations to legislate regarding nuclear waste disposal would leave citizens uncertain where responsibility for the location of waste disposal sites lay—with Congress, which effectively coerced the states into legislating, or with state officials, who would have made the ultimate legislative decision, but would have done so only in response to congressional coercion. "Accountability is...diminished when, due to federal coercion, elected state officials cannot regulate in accordance with the views of the local electorate in matters not preempted by federal regulation." 112 S.Ct. at 2424.

The national government's failure to stem the flood of illegal immigration in this case, coupled with its failure to fund state expenditures necessitated by that flood, has an accountability-diminishing effect that is even more acute than that at issue in *New York*. Compelled state expenditures for the benefit of non-citizens, amounting to hundreds of millions of dollars annually, predictably tend to create a backlash of resentment directed at the *state*. It is no wonder that citizens' ballot initiatives in turn seek to assume the state's decision-making prerogatives and deny public services and benefits, including education, to illegal immigrants.

What is constitutionally significant is that all political determinations made under such circumstances involve blurred lines of political accountability. As in *New York*, "federalism is hardly being advanced." 112 S.Ct. at 2432. This Court should grant the writ in this case to clarify the principles of federalism reflected in the Constitution and in *New York* and

to apply those principles in a case of great practical importance.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, this Court should grant a writ of certiorari and review the decision of the Court of Appeals.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General of Florida

LOUIS F. HUBENER
Assistant Attorney General
(Counsel of Record)

OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, FL 32399-1050
(904) 488-9935

COUNSEL FOR AMICUS CURIAE
STATE OF FLORIDA